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April 2, 2004

**VIA ELECTRONIC MAIL SERVICE AND HAND-DELIVERY**

The Honorable Bruce Duke  
Deputy Executive Director  
**South Carolina**  
**Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Application of BellSouth Telecommunications, Inc. To Provide In-Region  
InterLATA Services Pursuant to Section 271 of the Telecommunications Act  
of 1996, **Docket No. 2001-209-C, Our File No. 611-10116**

Dear Mr. Duke:

Enclosed is the original and fifteen (15) copies of the **Response of AT&T Communications of the Southern States, LLC, to BellSouth's Motion for Reconsideration** for filing in the above-referenced docket. I am serving all parties of record via electronic mail and enclose my certificate of service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

/S/

JJP/cr  
cc: All parties of record  
Enclosure

John J. Pringle, Jr.

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**DOCKET NO. 2001-209-C**

**RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, TO  
BELLSOUTH'S MOTION FOR RECONSIDERATION OF ORDER NO. 2004-100**

**The Commission's Decision is Supported by Substantial Evidence in This Docket.**

The testimony that formed the basis for the Commission’s decision indisputably is record evidence in this Docket, and was properly relied upon by the Commission in making its decision. The Commission based its decision in Order No. 2004-100 on the testimony of an AT&T witness, Robert M. Bell, that had become part of the record in this Docket. The Commission was justified in relying upon record testimony in this Docket, and should reject BellSouth’s argument that Mr. Bell’s testimony was not properly before the Commission. Not only is Mr. Bell’s testimony record evidence in this Docket, but the Commission specifically ruled that the testimony filed in Docket No. 2001-209-C would be considered for purposes of the August 21, 2003 hearing. In Order No. 2003-502, issued in Docket No. 2001-209-C on August 14, 2003, the Commission ruled that “the testimony that has already has been filed *in this docket* will form

the basis for the hearing.” (Emphasis added). “This docket” is Docket No. 2001-209-C. No party challenged that ruling. Therefore, because the Commission ruled, and no party objected, that the testimony filed in Docket No. 2001-209-C would form the basis of the hearing, the Commission made no error in relying upon that testimony in making its decision.

**The Commission Should not be Intimidated by  
BellSouth’s Threat to Appeal Order No. 2004-100.**

Rulings of the Commission are upheld on appeal as long as there is substantial evidence in the record to support the Commission’s decision. Substantial evidence” is “relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency’s action.” *Porter v. South Carolina Public Service Commission*, 507 S.E.2d 328, 333 S.C. 12 (1998). A “reasonable mind” could choose either AT&T’s position or BellSouth’s position. In addition, “the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports and administrative agency’s finding.” *Id.* That is exactly what happened in this matter: the Commission had before it BellSouth’s position and testimony, as well as the “polar opposite” testimony of the AT&T witness. The Commission can draw *any* conclusion based on the substantial record evidence in the docket. The Commission relied on substantial record evidence in making its decision, which means that the decision will be upheld on appeal.

**The Commission Did Not “Arbitrarily Fail to  
Follow Established Commission Precedent”**

BellSouth is correct that the Commission “cannot act arbitrarily in failing to follow established precedent.” *Concord Street Neighborhood Association v. Campsen*, 424 S.E.2d 538, 309 S.C. 514 (S.C. App. 1992). Further, the Commission cannot use a “previously adopted

policy” as the *sole basis* for an Order, but rather must set forth findings detailed enough for a reviewing court to determine whether the Commission’s findings are supported by the record evidence. *See Hamm v. South Carolina Public Service Commission*, 422 S.E.2d 110, 309 S.C. 282 (1992) (Emphasis added). In other words, the Commission must support its conclusions with record evidence, not mere citation to precedent. However, deciding to rely upon one party’s testimony instead of another’s (as the Commission did here) is not arbitrary, nor does it represent use of a “previously adopted policy” lacking in record evidence. As set forth above, the Commission’s ruling had a rational basis, as it relied upon testimony in the record of this docket. The Commission reasoned and exercised its judgment in choosing to rely upon Mr. Bell’s testimony and not Dr. Taylor’s. The Commission undeniably has the ability to choose between two competing positions as expressed in record testimony. A ruling based upon testimony in the record is not arbitrary merely because BellSouth disagrees with it.

If “arbitrary” were given the meaning proposed by BellSouth, then the Commission would have been obligated to adopt BellSouth’s position following the hearing. This cannot be the case. Additionally, if the Commission agrees with BellSouth, then the Commission could *never* grant a Petition for Reconsideration, because each such grant would be breaking from established “precedent.” Similarly, if the Commission were to adopt BellSouth’s interpretation of “arbitrary”, every ruling of the Commission on a particular issue would be set in stone, and not subject to future modification or reexamination.

**BellSouth's Oft-Repeated Position that the Commission  
Cannot Order BellSouth to Change the IPP Without its Consent is Bold Indeed.**

If BellSouth must “consent to any revisions to the IPP proposed by the Commission” (Motion for Reconsideration at Page 13), then it follows that the Commission can only issue Orders with which BellSouth agrees. If that is the case, then Order No. 2004-100 cannot and does not require BellSouth to change the IPP, and BellSouth need not Petition for Reconsideration in order to calculate payments under the IPP according to its current method. ***BellSouth can just do what it pleases, despite an Order of the Commission to the contrary.***

**Conclusion**

The Commission’s ruling in Order 2004-100 is on firm ground. The Commission’s decision is supported by substantial evidence in the record of this Docket, and did not arbitrarily fail to follow any Commission precedent. Finally, if BellSouth must consent to Commission Orders, then there is no need for BellSouth to have filed the Motion for Reconsideration.

Respectfully submitted this the 2nd day of April, 2004.

AT&T Communications of the Southern States, LLC

/S/

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**BEFORE THE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION  
DOCKET NO. 2001-209-C**

Application of BellSouth Telecommunications	)	
Inc. To Provide In-Region InterLATA	)	<b>CERTIFICATE OF SERVICE</b>
Services Pursuant to Section 271 of the	)	
Telecommunications Act of 1996	)	

This is to certify that I have caused to be served this day, one (1) copy of the **RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, TO BELLSOUTH'S MOTION FOR RECONSIDERATION** via electronic mail (unless otherwise specified):

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/S/

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Jack Pringle

April 2, 2004

Columbia, South Carolina

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